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*The Commonwealth of Massachusetts*  
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*Automatic Sprinkler Appeals Board*

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CHAIRMAN

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VICE CHAIR

**Docket # 2006-166**

**58 Lowell Street**

**Peabody, Massachusetts**

**AUTOMATIC SPRINKLER APPEALS BOARD  
DECISION**

**A) Statutory and Regulatory Framework**

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A; Chapter 148, section 26G½ and Chapter 6, section 201, relative to a determination of the Peabody Fire Department, requiring the installation of an adequate system of automatic sprinklers in a building owned and/or operated by the Ancient Order of Hibernians (hereinafter referred to as the Appellant). The building, which is the subject of the order, is located at 58 Lowell Street, Peabody, MA.

**B) Procedural History**

By written notice dated May 22, 2006 and received by the Appellant on May 26, 2006, the City of Peabody Fire Department issued an Order of Notice to the Appellant informing it of the provisions of M.G.L c. 148, s. 26G½, which requires the installation of an adequate system of automatic sprinklers in certain existing buildings or structures. The building subject to the Order is located at 58 Lowell Street, Peabody, MA. The Appellant filed an appeal of said order on July 7, 2006. The Board held an initial hearing on this matter on April 11, 2007, which was continued until August 8, 2007, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant were: Attorney John P. Slattery; Dave Breen, President and William A. Elwell, Treasurer. Appearing on behalf of the Peabody Fire Department was: Chief Steven Pasdon; Inspector Joseph DiFranco and Peabody Building Inspector Kevin Goggin.

Present for the Board were: Thomas Coulombe, Acting Chairman; Boston Fire Commissioner, Roderick J. Fraser, Jr.; Alexander MacLeod, Peter Gibbons; Aime R. DeNault, and George Duhamel. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

**C) Issue(s) to be Decided**

Whether the Board should affirm, reverse or modify the enforcement action of the Peabody Fire Department relative to the subject building in accordance with the provisions of M.G.L. c.148, s. 26G½?

**D) Evidence Received**

1. Application for Appeal by Appellant
2. Statement in Support of Appeal
3. Order of Notice of the Peabody Fire Department
4. Cost Estimates of Sprinkler System for Facility
5. Certificate of Inspection for Facility (dated 12/21/2005)
6. Denial of Request for Commercial Loan for Sprinklers
7. Commercial Property Record Card – City of Peabody
8. Drawings of the Facility (A-D)
9. Photographs of the Facility (A-L)
10. Notice of Pre-Hearing Status Conference to Appellant
11. Notice of Pre-Hearing Status Conference to Peabody Fire Dept.
12. Letter to Board from Appellant
13. 1<sup>st</sup> Notice of Hearing to Appellant
14. 1<sup>st</sup> Notice of Hearing to Peabody Fire Department
15. Certificate of Inspection (11/15/2007 expiration)
16. 2nd Notice of Hearing to Appellant
17. 2nd Notice of Hearing to Peabody Fire Department
18. Certificate of Inspection (No. 070705 – exp. 11/15/2007)
19. AOH Function Hall Rentals (A-B)
20. FD Photos (A-C top to bottom)
21. Advertisement submitted by FD
22. Picture of door w/ key card entry
23. Photo back door w/ key card
24. Profit and loss statement

**E) Subsidiary Findings of Fact**

- 1) By Notice dated May 22, 2006 and received by the Appellant on May 26, 2006, the Peabody Fire Department issued an Order of Notice to the Appellant requiring the installation of an adequate system of automatic sprinklers in a building located at 58 Lowell Street, Peabody, MA, in accordance with the provisions of M.G.L. c. 148, s. 26G½. The Appellant filed an appeal of said Order on July 7, 2006.
- 2) The Appellant, the Ancient Order of Hibernians, operates a two level brick masonry building with facilities for public assembly. A large portion of the first floor of this building consists of an area described as a function hall with dimensions of 63'x 49', consisting of a floor area of approximately 3,087 s.f. It also includes a separate service bar and rest rooms. The basement floor area includes an area describes as a "members' bar" or lounge.

- 3) There have been several Certificates of Inspection issued for this facility. One recent Certificate of Inspection (Temporary) issued for this facility by the City of Peabody (expiration date of 11-15-07) indicates a current use group classification of “A-3” with a total capacity of 325 persons throughout the facility. However there is also another recent Certificate, which contains separate occupant loads for the first floor and basement. The parties seem to be in agreement that the current Certificate of Inspection applicable to this establishment is certificate # 070705, issued on 12-31-06, which indicates that this building has been assigned an A-3 use group classification and it has an allowable occupant load in the basement area of “Bar 50 & Tables Chairs 50” and the first floor level consisting of an occupant load of “Table & Chairs 225”. There have been previous Certificates of Inspection (issued on 12-31-05 and on 12-31-06), which have indicated similar separate allowable occupant loads for said basement and first floor.
- 4) The representatives of the Appellant indicated that the basement bar area does in fact have characteristic of a typical bar. They indicated that plans have been offered to reduce the allowable occupant load of the bar area to 87 persons. However, such plans and occupancy reduction have not been finalized and it appears that such action is, at this time, merely speculative.
- 5) With respect to the first floor function area, the Appellant indicated that the facility hosts mostly privately organized functions for members and their families and that all such rentals are booked pursuant to a written contract. They further testified that at such events, the meal is the primary attraction for 90% of the functions. The representatives stated that most of the typical functions involve wedding receptions; anniversary, reunion, birthday, graduation, anniversary and christening parties and funeral collations. As example of the frequency of such events the Appellants indicated that during the year 2005 the facility had 131 events.
- 6) For rental functions, the Appellant’s representatives indicated that entertainment is allowed and typically consists of a disc jockey for music and dancing purposes. The function hall features a 26’x 24’ dance hall. Live bands are not permitted. The Appellants also testified that these events have a definite ending and starting time and that guests for such events are limited for each function by pre arrangement. An on-site manager is present at all functions and this person also acts as a service bar bartender.
- 7) The Appellant argued that the first floor function hall should be exempt from the sprinkler requirements based on the criteria laid out in the “Leicester” decision, a previous determination of this Board.
- 8) In support of the Peabody Fire Department’s determination, Chief Pasdon testified that the facility should be required to install sprinklers since there is no physical/operational separation between the first floor function hall and downstairs members bar. He indicated that he believes that the facility allows a “free flowing” occupancy between the first floor function area and the basement bar area. He recalled that on at least one occasion he had visited the facility and had been able to move freely between said floors. The Appellant indicated that members from the members’ bar area are not prohibited from traveling between the bar area and the function hall during some function events. However, Appellant indicated that non-member function guests are not generally allowed into the members’ bar area.

- 9) Chief Pasdon further testified that he believes that many of the events that feature entertainment are not organized dining events where the meal is the primary attraction, as per previous determinations of this Board. In support of his conclusion, the chief submitted two photographs depicting banner advertisements prominently displayed on the front of the establishment. The advertisements clearly describe events that feature alcoholic beverages, music by DJ and indicate that entry is made by a donation at the door. He indicated that such events tend to show that attendance is not pre-arranged, thus lacking the strict control necessary for the exemption.
- 10) Additionally, the Chief voiced his concerns regarding the number and location of the exits which are shared by both the first floor function hall and the basement bar area. He also raised questions about the accuracy of the measurements presented in the submitted floor plans.

**F) Ultimate Findings of Fact and Conclusions of Law**

- 1) The provisions of the 2<sup>nd</sup> paragraph of M.G.L. c. 148, s. 26G½, in pertinent part states: “ every building or structure, or portions thereof, of public assembly with a capacity of 100 persons or more, that is designed or used for occupancy as a night club, dance hall, discotheque, bar, or similar entertainment purposes...(a) which is existing or (b) for which an approved building permit was issued before December 1, 2004, shall be protected throughout with an adequate system of automatic sprinklers in accordance with the state building code”. The law was effective as of November 15, 2004.
- 2) The statutory timeline for said sprinkler installation in accordance with the provisions of section 11, St. 2004, c.304, required the submission of plans and specifications for the installation of sprinklers within 18 months of the effective date of the act (by May 15, 2006) and complete installation within 3 years of the effective date of the act (by November 15, 2007).
- 3) In a memorandum dated 1-10-05, this Board issued an interpretive guidance document relative to the provisions of this new law found in c.148, s. 26G½. This law was a portion of a comprehensive legislative initiative undertaken as the result of a tragic Rhode Island nightclub fire, which took place in February 2003. In said memorandum, this Board acknowledged that the statute did not contain a definition of the words “nightclub, dance hall, discotheque, bar or similar entertainment purposes.” However, the board noted that the terms “nightclub” and “dance hall” are used within the A-2 use group classification found in the 6<sup>th</sup> Edition of the Massachusetts Building Code, 780 CMR 303.3. This use group definition was drafted from nationally recognized model building code language. The commentary documents relating to the A-2 use group definitions used in the nationally recognized model code, indicates that such classification includes occupancies in which people congregate in high densities for social entertainment purposes. Examples given in the commentary are: dancehalls, nightclubs, cabarets, beer gardens, drinking establishments, discotheques and other similar facilities. The commentary concluded that the uniqueness of these occupancies is characterized, but not limited to, by the following factors:
  - a) No theatrical stage accessories other than raised platform;
  - b) Low lighting levels;
  - c) Entertainment by a live band or recorded music generating above-normal sound levels;
  - d) Later-than-average operating hours;

- e) Tables and seating arranged or positioned so as to create ill defined aisles;
- f) A specific area designated for dancing;
- g) Service facilities primarily for alcoholic beverages with limited food service; and
- h) High occupant load density.

It was the interpretation of this board that such characteristics are typical of the “A-2 like” occupancy (which was a general reference to the A-2 use group referenced in 780 CMR, The State Building Code) and that these are the type of factors that heads of fire departments should consider in enforcing the sprinkler mandates of M.G.L. c.148, s. 26G½. It was noted that the list of characteristics was not necessarily all-inclusive. Additionally, the factors may be applied individually or in combination depending upon the unique characteristics of the building at the discretion of the head of the fire department.

- 4) The function hall area of this building, located on the first floor level, has an occupancy load of over 100 persons and is used for a wide variety of social events. It appears that many of these events can be classified as organized private dining events that feature a meal as the main attraction. Such “organized private dining events,” by their very nature, have pre-arranged limitations on attendance and seating because a meal is being prepared and served. They tend to have fixed starting and ending times and do not have later than average operating hours. Whether the meal is buffet style or sit-down, each guest has a chair and a table to sit down and eat. Although there may be dancing to live or recorded music during some portion of the event, the entertainment is not the main feature of the event. The dancing activity is limited to those persons who are attending for the purposes of eating a meal. In such situations the occupant load is not typically concentrated or crowded.
- 5) As the representative of the Appellant has correctly indicated, this Board in previous decisions has determined that under certain circumstances, a portion of a place of assembly, which provides facilities for organized private dining events, may not necessarily be subject to the retroactive sprinkler installation requirements of M.G.L. c.148, s. 26G½. The existence of the certain characteristics of such dining events is distinguishable from the “A-2 like” characteristics that this Board concluded were typical of nightclubs, dancehalls and discotheques and within the legislative intent of this law. The characteristics are as follows:
  - 1. The facility is used for events that feature a meal as the primary attraction.
  - 2. The facility is used for events that are organized for the purpose of a private function. Attendance for each specific event is limited and pre-arranged between the facility operator and the private event organizers. The number of guests is limited by written invitation or limited ticket availability and does not exceed the agreed upon attendance limit.
  - 3. Each event has a definite starting and ending time.
  - 4. Tables and chairs are arranged in well-defined aisles in such a manner to not impede easy egress, and
  - 5. There are no significantly low lighting levels, and

6. The maximum documented legal capacity, based upon the available floor space, is not less than 15 feet (net) per occupant. The Board notes that this formula is consistent with the definition of the “unconcentrated” Assembly Occupancy found in 780 CMR, The State Building Code (6<sup>th</sup> Edition), table: 780 CMR 1008.1.2.
7. The characteristics of the event, as referenced above, are strictly controlled by an on-site manager and are made part of a written function event contract.

Examples of organized private dining events may include organized banquets, private parties, fundraisers, wedding receptions and ceremonial banquet events, as long as all the aforementioned characteristics exist.

- 6) Upon reviewing the evidence, the Appellant failed to sufficiently meet all of the above characteristics required for this board to make a determination that the first floor function area is not subject to the s. 26G1/2 sprinkler requirements. Said function area clearly does not meet the “unconcentrated” occupant load requirement” (not less than 15 [net] per occupant) based upon the current legal capacity limit (225) and the current floor area (3087 s.f). Additionally, there was significant evidence, in the form of the Chief’s testimony and photographs of advertisements, which tend to indicate that when entertainment or “A-2” type activities occur in this function, they do not necessarily involve “organized private dining events”. A crucial aspect of the “organized private dining event,” is the predictability, control and limitation with regards to occupancy as aforementioned. The advertisements that were prominently displayed on the front of the establishment clearly market events that feature alcoholic beverages and music by DJ and indicate that entry is made by a donation at the door. This indicates that at such events attendance is not pre-arranged and thus lacking the important factors of predictability, control and limitation necessary to support the “organized private dining event” criteria established by this Board.
- 7) With respect to the basement bar area, the Board finds that this portion of the building is clearly used and designed as a bar, with a listed occupancy of 100 persons and therefore within scope of s. 26G1/2. Appellants failed to provide any evidence, which contradicts this finding. Appellants’ activity involving the possible alteration of this area and reduction of the present occupancy limit are, at this time, speculative and therefore not subject to consideration by this Board.

#### **G) Decision**

Based upon the aforementioned findings and reasoning, the Board hereby **upholds** the Order of the Peabody Fire Department to install adequate sprinkler protection in the subject building in accordance with the provisions of M.G.L. c.148, s. 26G1/2.

The Appellant is hereby required to install an adequate system of automatic sprinklers, as defined in s. 26G1/2, in the function hall and basement members’ lounge/bar area, including all areas of egress from said areas.

Sprinkler plans shall be submitted to the Peabody Fire Department within 60 days of the receipt of this decision. Installation shall be completed by November 15, 2007, in accordance with the statute (see section 11, c.304 of the Acts of 2004), unless the Peabody Fire Department, in accordance with said statute, otherwise grants an extension.

**H) Vote of the Board**

Thomas Coulombe, Acting Chairman	In favor
Commissioner Roderick J. Fraser, Jr.	In favor
Alexander MacLeod	Opposed
Peter Gibbons	In favor
Aime R. DeNault	In favor
George A. Duhamel	In favor

**I) Right of Appeal**

You are hereby advised that you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



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Thomas Coulombe, Acting Chairman

Dated: October 3, 2007

**A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL,  
RETURN RECEIPT TO:**

William Elwell  
The Ancient Order of Hibernians, Division II  
58 Lowell Street  
Peabody, Massachusetts 01960

Chief Steven E. Pasdon  
Peabody Fire Department  
47 Lowell Street  
Peabody, Massachusetts 01960